IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

MFA.No. 151 of 1999()

OA.93/1992 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANT:
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1. BEENA RADHAKRISHNAN, W/O.LATE RADHAKRISHNAN, RESIDING AT 'MATHRU SMRITHY', UNION CLUB ROAD, KARAPPUZHA KARA, KOTTAYAM VILLAGE, KOTTAYAM TALUK.

2. BINOY R., SON OF LATE RADHAKRISHNAN, RESIDING AT DO. DO.

3. BINITH M.R. SON OF LATE RADHAKRISHNAN, RESIDING AT DO. DO.

4. ROSHINI R., D/O.LATE RADHAKRISHNAN, DO. DO.

BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)

RESPONDENTS:
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1. CUSTODIAN OF VESTED FORESTS AND CONSERVATOR OF FORESTS, OLAVAKKODE CIRCLE, KOZHIKODE - 28.

2. THE DIVISINAL FOREST OFFICER, PALAKKAD-9.

3. THE MANAGING DIRECTOR, KERALA FOREST DEVELOPMENT CORPORATION, KOTTAYAM.

BY ADV. SRI.V.G.ARUN.
SPL.GOVERNMENT PLEADER(FORESTS) SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18.9.2007, THE COURT ON 18/09/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.151 OF 1999

Dated this the 18th day of September, 2007

JUDGMENT

Koshy, J.

The predecessor-in-interest of the applicant filed an application before the Forest Tribunal claiming that 104.43 acres of land in their possession was illegally interfered by the forest officials. It is stated that the above land was originally rubber plantation and the applicant is entitled to get exemption under Sections 3(2) and 3 (3) of the Kerala Private Forests (Vesting and Assignment) Act. It is the case of the appellants that the land originally belonged to the Devaswom and it was leased to one Cheriyan Luckose, PW2, and the applicant got possession of the land after executing an agreement of sale on 7.9.1982. The Tribunal found that only southern boundary owned by Sherry Luckose was having rubber plantation and the scheduled property was not a rubber plantation and there is no evidence of rubber plantation. Further, it was held by the Tribunal that the land in question was a part of Malavaram covered under the Madras Preservation of Private Forest act and is a vested forest vested in the Government under Section 3(1) of the

Act. Exhibit A1 lease deed allegedly given by the Devaswom to the predecessor-in-interest of the applicant, PW2, was cancelled by the Government and the Devaswom filed O.S.No.23 of 1987 for recovery of possession and recovery of possession was decreed on payment of cost of improvements. The Tribunal also found that there was virtually no improvement in the property. Whatever it may be, according to learned counsel, even if the lease is cancelled, the petitioner will become as a deemed tenant under Section 7-D of the Land Reforms Act and he was in possession of the property. In ***Athura Seva Sanghom v. State of Kerala*** (2002(1) KLT 317) a Division Bench of this Court held that if the lease is cancelled an illegal lessee cannot get the benefit of deemed tenancy under section 7-D. It is submitted by learned counsel for the appellants that the above judgment is under appeal in the Supreme Court. However, as far as this case is concerned, we are bound to follow the above decision, as the above decision was not stayed.

2. The alleged agreement of sale executed in 1982 in favour of the applicant was also not accepted by the Tribunal as the document was impounded, as it is actually a deed of sale not properly stamped. PW2 deposed that the entire sale consideration was received and the possession was handed over on executing the

same and despite giving an opportunity to pay stamp duty, the document was not fully stamped as sale deed and it was not registered. In any event, assuming that the petitioner got the property in 1982 even then the petitioner cannot claim the benefit of Section 3(1) or 3(2) of the Act as it was held by this Court in ***Koya v. State of Kerala*** (1987(1) KLT 830) that exemption under Sections 3 (2) and 3(3) of the Act can be claimed by the owner of land who is in possession of the land at the time when the Act came into force. Apart from the same, the Tribunal also noticed that Cheriyan Luckose has filed various OAs including O.A.No.28 of 1978 and all those O.As were finally dismissed. Cheriyan Luckose claimed 600 acres of land. The alleged agreement of sale and transfer of possession of the land was after dismissal of O.A.28/95. Tribunal also noted that Sri.Cheriyan Luckose on the same allegations came with O.A.18/93, 19/93, 21/93, 24/93, 25/93 and 26/93 contending that they were put in possession by Sherry Luckose. Whether the owner of the land was holding land within the ceiling permit when the Act came into force was also not proved. With regard to the land in question there was no evidence of cultivation when the Act came into force. Taking all the facts into consideration, in view of the factual position as held by the Tribunal and the legal aspects as noticed by us, we are of the opinion that no interference is required

in the impugned order of the Tribunal.

The appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.151 OF 1999

JUDGMENT

18.9.2007